



April 26, 2001

Mr. George D. Cato
Deputy General Counsel
Texas Department of Health
1100 West 49th Street
Austin, Texas 78756-3199

OR2001-1712

Dear Mr. Cato:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 146447.

The Texas Department of Health (the “department”) received a request for information regarding IHS Hospital of Dallas, a general hospital licensed by the department. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

You acknowledge that the department failed to comply with section 552.301(b) of the Government Code in asking for this decision. Section 552.301 prescribes procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Section 552.301(b) provides that “[t]he governmental body must ask for the attorney general’s decision and state the exceptions that apply . . . not later than the 10th business day after the date of receiving the written request [for information].” Gov’t Code § 552.301(b). We also note that, in a letter to this office, the requestor claims that the department failed to comply with the requirements of section 552.301(e) of the Government Code.¹ Section 552.302 provides that “[i]f a

¹The requestor also contends that the department failed to comply with section 552.305 of the Government Code. Section 552.305 applies only if a governmental body believes that a third party’s privacy or proprietary interests are implicated by a request, and this is evidently not the case here. *See* Gov’t Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining that statutory predecessor to Gov’t Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Act in certain circumstances).

governmental body does not request an attorney general decision as provided by Section 552.301 . . . the information requested in writing is presumed to be subject to required public disclosure and must be released unless there is a compelling reason to withhold the information.” Gov’t Code § 552.302.

You argue that the submitted information is excepted under section 552.101 of the Government Code. Section 552.101 of the Government Code provides a compelling reason to overcome the presumption of openness. *See* Open Records Decision No. 150 (1977) (presumption of openness overcome by a showing that the information is made confidential by another source of law or affects third party interests).

Section 552.101 of the Government Code protects “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Section 552.101 encompasses confidentiality provisions such as section 241.051 of the Health and Safety Code. You argue that section 241.051 of the Health and Safety Code prohibits the release of all of the submitted documents in their entirety. Chapter 241 of the Health and Safety Code governs licensing of hospitals. Section 241.051 authorizes the department to make any inspection, survey, or investigation that it considers necessary, and provides in pertinent part:

(d) All information and materials obtained or compiled by the department in connection with a complaint and investigation concerning a hospital are confidential and not subject to disclosure under Section 552.001 et seq., Government Code, and not subject to disclosure, discovery, subpoena, or other means of legal compulsion for their release to anyone other than the department or its employees or agents involved in the enforcement action except that this information may be disclosed to:

- (1) persons involved with the department in the enforcement action against the hospital;
- (2) the hospital that is the subject of the enforcement action, or the hospital’s authorized representative;
- (3) appropriate state or federal agencies that are authorized to inspect, survey, or investigate hospital services;
- (4) law enforcement agencies; and
- (5) persons engaged in bona fide research, if all individual-identifying and hospital-identifying information has been deleted.

(e) The following information is subject to disclosure in accordance with Section 552.001 et seq., Government Code:

- (1) a notice of alleged violation against the hospital, which notice shall include the provisions of law which the hospital is alleged to have violated, and a general statement of the nature of the alleged violation;
- (2) the pleadings in the administrative proceeding; and
- (3) a final decision or order by the department.

You state that the department obtained and compiled the submitted information as a result of a complaint and investigation concerning a general hospital. *See* Health & Safety Code § 241.003(5) (defining general hospital). You also state that the submitted information does not contain any information that falls within the exceptions to confidentiality outlined in section 241.051 of the Health and Safety Code. After reviewing the submitted information, we agree that the submitted information is confidential pursuant to section 552.101 of the Government Code in conjunction with section 241.051 of the Health and Safety Code.

You also indicate, however, that some of the submitted documents are confidential pursuant to chapter 48 of the Human Resources Code. Chapter 48 of the Human Resources Code governs investigations and protective services for elderly and disabled persons. Section 48.101 reads in part as follows:

(a) The following information is confidential and not subject to disclosure under Chapter 552, Government Code:

- (1) a report of abuse, neglect, or exploitation made under ... chapter [48 of the Human Resources Code];
- (2) the identity of the person making the report; and
- (3) except as provided by this section, all files, reports, records, communications, and working papers used or developed in an investigation made under this chapter or in providing services as a result of an investigation.

(b) Confidential information may be disclosed only for a purpose consistent with this chapter and as provided by department or investigating state agency rule and applicable federal law.

Therefore, the information that you have marked as confidential under section 48.101 of the Human Resources Code must not be released to the public, except for a purpose consistent with chapter 48 of the Human Resources Code, or as provided by a department or investigating state agency rule or federal law. *See id.* § 48.101(b); *but see id.* § 48.101(c), (d), (e), (f) (permitting release of confidential information in certain circumstances).

Section 48.101 authorizes the adoption of rules for the release of information otherwise made confidential by the statute. Subsection (d) provides that “the department or investigating state agency by rule *shall* provide for the release on request [of otherwise confidential information] to a person who is the subject of a report of abuse, neglect or exploitation or to that person’s legal representative[.]” Hum. Res. Code § 48.101(d) (emphasis added). You inform us that section 48.101 is referenced at section 1.207 of title 25 of the Texas Administrative Code, which relates to the confidentiality of information used or developed in the investigative process. You state that “section 1.207 . . . references specific statutory exceptions that in certain instances would allow release of documents developed during the investigative process.” In pertinent part, section 1.207(h) reads:

The completed investigative report regarding abuse, neglect, or exploitation of an elderly or disabled person shall be released to the subject of a report of abuse, neglect, or exploitation or to that person’s legal representative upon request. Any information relating to the reporter’s identity or any other individual whose safety or welfare may be endangered by the disclosure shall be blacked out or deidentified.

25 T.A.C. § 1.207(h) (emphasis added). Section 1.207 grants a limited right of access to information that section 48.101, which authorizes the promulgation of the rule, otherwise makes confidential. We do not believe that the specific purpose of section 1.207 is irreconcilable with the general purpose of section 241.051 of the Health and Safety Code.² Accordingly, we find that subsection 48.101(d) of the Human Resources Code, in conjunction with section 1.207(h) of title 25 of the Texas Administrative Code, requires the release of the completed investigative report regarding the reported abuse or neglect at issue here to the requestor if the requestor is the legal representative of the victim of such abuse or neglect. However, any information in the completed report that identifies the reporter must be withheld pursuant to section 1.207(h).

Finally, we note that this decision only addresses whether the requested information is subject to required public disclosure under the Public Information Act. It does not address whether the requestor in this instance is the legal representative of the subject of the reported abuse or neglect.

²A valid administrative rule generally is construed in the same manner as a statute and has the force and effect of legislation. *See City of Lubbock v. Public Utility Comm’n*, 705 S.W.2d 329, 330-31 (Tex. App.—Austin 1986, writ ref’d n.r.e.); *see generally* 2 Tex. Jur. 3d Administrative Law §§ 41, 42 (1995).

In summary, we conclude that (1) except for the information identifying the reporter, the department must release the completed investigative report regarding the reported abuse or neglect at issue here to the requestor if the requestor is the legal representative of the victim of such abuse or neglect pursuant to section 1.207(h) in conjunction with subsection 48.101(d) of the Human Resources Code; (2) the department must withhold the remaining information pursuant to section 552.101 of the Government Code in conjunction with section 241.051 of the Health and Safety Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script, reading "Karen A. Eckerle".

Karen A. Eckerle
Assistant Attorney General
Open Records Division

KAE/tr

Ref: ID# 146447

Encl: Submitted documents

cc: Mr. Bill Nelson
Paralegal for Jill Hertz
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(w/o enclosures)